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Labor & Employment Law for California Employers

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California Labor Commissioner Before U.S. Supreme Court

On February 20, 2008, the United States Supreme Court decided *Preston v. Ferrer.* A contract between TV personality "Judge Alex" and attorney Arnold M. Preston required arbitration of any dispute relating to the contract, in accordance with American Arbitration Association rules.

Preston invoked that provision to obtain attorney fees allegedly due under the contract. Judge Alex then filed a petition with the California Labor Commissioner alleging that the contract was invalid and unenforceable under the Talent Agencies Act (TAA), a California law, because Preston had acted as a talent agent without a license. The petition was

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LEGAL ROUNDUP

New Drug Testing Decision

On March 13, 2008, the Federal 9th Circuit Court of Appeals decided *Lanier v. City of Woodburn* concerning a city's policy of requiring candidates for city jobs to pass a pre-employment drug test as a condition of a job offer. Lynn Lanier was the preferred applicant for a part-time position as a page at the Woodburn library and was required to pass the drug test. The court determined the policy was unconstitutional as applied since the city failed to demonstrate a special need to screen a prospective page for drugs. Nevertheless, Lanier did not show that the policy could never be constitutionally applied to any city position.

Retaliation Against Supervisors Thrown Out

On March 3, 2008, the California Supreme Court decided *Jones v. The Lodge at Torrey Pines Partnership.* The court ruled that supervisors may not be held personally liable for retaliation under the California Fair Employment and Housing Act, just as they may not be held personally liable for discrimination under that same law. Supervisors may still be held personally liable for harassment under the FEHA.

401k Participants May Sue Under ERISA

On February 20, 2008, the United States Supreme Court decided *LaRue v. DeWolff, et al.* The court ruled that although Section 502(a)(2) of the Employee Retirement Income Security Act of 1974 (ERISA) does not provide a remedy for individual injuries distinct from plan injuries, it does authorize recovery for fiduciary breaches that impair the value of plan assets in a participant's individual account.

Flexibility in Providing Meal Periods

On February 13, 2008, California State Senator Bob Margett introduced SB1192 that would give California employees more flexibility in deciding when to take a meal break. The proposed law would extend the time in which a meal period must be taken to any time before the sixth hour of work. Similarly, on or about February 22, 2008, SB1539 was introduced by Senator Fred Calderon that would specify that a meal period based on working more than five hours in a work day is required to be provided before the employee completes six hours of work, unless an existing waiver provision is invoked. Any provisions for a second meal period would be changed to provide an exception for reasons within the IWC Wage Orders, and to permit the employer and employee to agree to waive either the first or the second meal period if the employee otherwise is entitled to two meal periods. The bill specifies conditions under which an on-duty meal period would be permitted rather than a meal period in which the employee is relieved of all duty.

Performance, Not Color, Leads to Dismissal

On March 5, 2008, the California Court of Appeal decided *Hicks v. KNTV Television, Inc.* The court ruled that a white TV anchorman replaced by a black man failed to prove race discrimination. The station argued that the anchor was replaced because his on-air style did not meet management expectations. Although the TV station admitted it used subjective criteria in replacing Hicks, that does not necessarily prove the reasons for the discharge were a pretext for discrimination, said the court. The station produced evidence that Hicks was replaced for reasons unrelated to his race.

Judge Alex

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denied and Judge Alex then filed suit in state court seeking to enjoin arbitration while Preston moved to compel arbitration. The United States Supreme Court held that, when parties agree to arbitrate all questions under a contract, the Federal Arbitration Act supersedes state laws granting jurisdiction in another forum. The court ruled that the arbitrator, not the Labor Commissioner, had to decide whether Preston acted as an unlicensed talent agent in violation of the TAA or as a personal manager not governed by the TAA. The Federal Arbitration Act declares a national policy favoring arbitration when parties contact for that mode of dispute resolution.

HOMELAND SECURITY

Immigration Penalties Increase

On February 22, 2008, Attorney General Michael Mukasey and Homeland Security Secretary Michael Chertoff announced an increase by 25 percent in the fines that will be assessed against employers who knowingly hire illegal immigrants. At the present time, fines range from $275 to a high of $11,000, depending on the type of offense; some penalties include a six month jail term. During fiscal year 2007, Immigration and Customs Enforcement arrested 92 employers, arrested 771 employees, and imposed fines of more than $30 million.

"Me Too" Evidence Admissible

On February 26, 2008, the United States Supreme Court decided *Sprint v. Mendelsohn.* In the trial of an age discrimination dispute, the employer filed a motion to exclude the testimony of former employees alleging discrimination by supervisors who had no role in the employment decision being challenged; the employer argued that such evidence was irrelevant to the central issue of the case and unduly prejudicial. The trial court excluded evidence of discrimination against those not similarly situated to plaintiff Mendelsohn. The United States Supreme Court held that, under federal rules, such evidence is neither per se admissible nor per se inadmissible, and that trial courts must conduct a relevance inquiry under the appropriate standards to determine the admissibility of such evidence. The Supreme Court ruled unanimously that the extent of and whether "me too" evidence may be admitted is up to the trial judge overseeing the case.

FMLA for Families of Armed Forces Members

On January 28, 2008, Congress amended the U.S. Family and Medical Leave Act, extending leave protections to the families of members of the armed forces of the United States. Covered employers must post a new poster. (There are now six posters the federal government mandates that covered employers must display.) Generally, covered companies may be required to provide up to twelve weeks of family leave for an employee whose family member will be on active duty with the United States military, and up to 26 weeks of family leave for an employee to care for a family member who has been injured in the line of duty while serving in the United States Armed Forces.

KDG Provides Employment Counseling, Labor Counseling and Litigation for Management

KDG handles a full range of employment and labor matters in the private and public sectors on behalf of management.

We serve as counselors to many Human Resource departments, offering services such as the development of employee handbooks, policies and procedures manuals and other materials in support of our clients' management needs. Do not hesitate to contact any one of our team members if you have employment questions or concerns.

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Sexual Harassment Training: It's the Law

State-Mandated AB1825 May Affect You

State law requires all employers of 50 or more employees to provide all supervisors with two hours of interactive training on the causes and prevention of sexual harassment. This includes temporary workers and independent contractors working on your company's premises. And new supervisors must be trained within six months of hire.

Don't jeopardize your assets...Join KDG HR Solutions for training to ensure your business is in compliance with AB1825.

Wednesday, June 18, 2008, 9:00 a.m.-11:00 a.m.
Klein, DeNatale, Goldner 3rd Floor Training Room
4550 California Avenue
$50.00 registration fee per attendee

For registration, contact Brandi Gray at bgray@kleinlaw.com or call 661-634-1200 for more information.

KDG Human Resource Solutions presents

Lunch & Learn

This monthly program is designed to provide continuing education on timely, HR management issues that affect your business. Join us at the next sessions where we'll present:

"Employee Privacy in a My Space World"

Wednesday, April 23, 2008
12:00 p.m. – 1:00 p.m.

"OSHA Update"

Wednesday, May 21, 2008
12:00 p.m. – 1:00 p.m.

"Four Generations at Work—Potential Conflicts and Practical Resolutions"

Wednesday, June 18, 2008
12:00 p.m. – 1:00 p.m.

"Deciphering Leaves of Absence"

Wednesday, July 23, 2008
12:00 p.m. – 1:00 p.m.

All meetings are in the Klein, DeNatale, Goldner Training Room, 4550 California Avenue, Third Floor, Bakersfield.

The cost is $10 per person, or complimentary to KDG Human Resource Solutions clients (up to four attendees/contract). To make your reservations, contact Brandi Gray at (661) 634-1200 or bgray@kleinlaw.com.

UPDATE

Welcome to the latest issue *of our*

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